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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,899	07/22/2003	Laure Thiebaut	LOREAL 3.0-037; OA02222/N	3769
530	7590	03/15/2005	EXAMINER	WALCZAK, DAVID J
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/626,899	THIEBAUT, LAURE	
	Examiner	Art Unit	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 January 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) 4 and 7 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3 and 8-17 is/are rejected.
 7) Claim(s) 5 and 6 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 22 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 7/22/03.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Election

Applicant's election without traverse of Species I in the reply filed on 1/10/05 is acknowledged. Claims 1-3, 5, 6 and 8-17 are readable thereon and will be examined herein. Claims 4 and 7 are withdrawn from further consideration.

Abstract

The abstract of the disclosure is objected to because phrases which can be implied, such as "The present invention discloses relates" (see line 1) should not be present therein. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to because reference character 35 (see line 3 of paragraph 0048) is not present in any of the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Weber. In regard to claim 1, Weber discloses a package and application device for a product comprised of a receptacle for containing product (not numbered) having a longitudinal axis and a passageway 12, a porous or fibrous applicator element 16 (see column 2, lines 44-52) communicating with the product through the passageway, a dispensing element for opening and closing the passageway and including a mobile part 5 rotatable about the axis and capable of moving between a first position in which the passageway is closed and a second position in which the passageway is open and a closure cap 9 threaded to the dispensing element for

enclosing the applicator element wherein rotational movement of the cap about the axis causes the opening and closing of the passageway (see the paragraph bridging columns 4 and 5). In regard to claim 2, the mobile part is capable of moving independently of the cap, i.e., in the absence of the cap, the mobile part 5 can be manually grasped and rotated. In regard to claim 3, the cap is capable of being screwed onto the dispensing element irrespective of the position of the mobile part. In regard to claim 8, the applicator element 16 is considered to be mounted in a "removable manner", i.e., given enough force, the applicator can be removed. In regard to claim 12, the applicator element is foam (see column 4, line 61). In regard to claim 13, the device is "adapted" (i.e. capable) of facilitating the application of product onto human nails.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stien. Although the Weber device does not include additional applicator elements stored in the cap 9, attention is directed to the Stein reference, which discloses another applicator having a foam tip 16 (see column 2, lines 61-64) wherein cap 50 has a holder

therein which is used to store additional applicator tips 16 in order to enable a user to readily replace the tip when needed. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a holder for extra tips in the cap 9 of the Weber device in order to enable a user to have ready access to extra tips.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Jones. Although the Weber reference does not disclose that the device is used to apply nail varnish remover by squeezing the container via a deformable wall, attention is directed to the Jones reference, which discloses another applicator wherein the container is squeezed in order to expel nail polish remover onto a nail (see column 2, lines 53-59). Such a structure is employed in order to provide the user with a convenient method of applying polish remover. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the Weber device to dispense polish remover and further to provide a flexible container such that the material can be dispensed by squeezing the container in order to enable a user to conveniently apply polish remover, especially since the Weber reference does not limit the type of material which can be dispensed.

Allowable Subject Matter

Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
3/12/05